

REMARKS

Applicants wish to thank Examiner Mai for the helpful and courteous discussion held with their representatives during an Interview on July 7, 2005. At that time, Applicant's representative urged that the claimed invention provides unexpected advantages over the prior art with respect to grain direction and the thickness of the material used for the claimed article. The following is intended to expand upon the discussion with the Examiner.

The term "cellulosic" in the claims has been replaced by "paperboard". Support for this amendment can be found on page 3, 3rd line following the heading "Brief Summary of the Invention".

The claims have also been amended to correct a spelling error: the term "frusto-conicle" has been amended to read "frusto-conical". A number of grammatical changes have also been made to improve the clarity of the claim language.

The following sets forth the present rejections in this application:

1. Claims 1-5 stand rejected under 35 USC 102(b) as being anticipated by Olsen (US 1,979,992).
2. Claims 1-5 stand rejected under 35 USC 102(b) as being anticipated by Lehmann (US 2,344,359).
3. Claims 6-9 and 11-12 stand rejected under 35 USC 103(a) as being unpatentable over Lehmann.
4. Claims 1-9 and 11-12 stand rejected under 35 USC 103(a) as being unpatentable over Eisman et al. (US 5,229,182) in view of Olson, Lee, or McConnell.

5. Claim 10 stands rejected under 35 USC 103(a) as being unpatentable over Eisman et al. in view of Herbst et al. (US 4,552,264).

6. Claims 1-5 stand rejected under 35 USC 103(a) as being unpatentable over Herbst et al. in view of either Olson, Lee, or McConnell.

7. Claims 6-12 stand rejected under 35 USC 103(a) as being unpatentable over Herbst et al. in view of Eisman et al.

Applicants respectfully traverse all of the rejections 1-7 set forth above.

None of the references, when taken alone or in combination with one or more of the other references, disclose or suggest a food scoop and serving container comprising an upwardly tapered frusto-conical portion of stiff resilient paperboard having a generally circumferential grain direction and a base for closing a bottom of said frusto-conical portion, as presently claimed.

In support of their assertion that the claimed invention would not have been obvious to a person of ordinary skill in the art, Applicants attach hereto a Declaration pursuant to 37 CFR 1.132 by Michael G. Bodary, one of the inventors. The Declaration states that tests results support Applicant's claim (see the paragraph bridging pages 3 and 4 of the specification) that the circumferential grain direction of a finished food scoop and serving container (hereinafter "container") according to the invention have unexpected advantages in that:

- The finished container has an increased stiffness as compared to a container of greater thickness and having a grain direction in the direction of from the top to the bottom of the container;

- The layout of the carton elements reduces scrap area and results in significant paper savings.

Furthermore, the commercial success of the claimed container is evidenced by the fact that the container of the invention is now used by all Wendy's Restaurants of Canada.

Accordingly, Applicants submit that the invention, as defined by the present claims, is neither disclosed in nor suggested by the cited prior art of record, and the rejections under 35 U.S.C. 102(b) and 103(a) should be withdrawn.

Applicant respectfully submits that the present invention is now in condition for allowance and early notice of such action is earnestly solicited.

Applicants hereby petition the Commissioner for Patents to extend the time for reply to the notice dated February 9, 2005, for three (3) months from May 9, 2005, to August 9, 2005. A duly completed credit card authorization form is attached to effect payment of the extension fee.

Respectfully submitted,



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